

In the United States Bankruptcy Court  
for the  
Southern District of Georgia  
Brunswick Division

In the matter of:	)	
	)	
DAVID EUGENE WEST	)	Adversary Proceeding
(Chapter 13 Case <u>94-20712</u> )	)	Number <u>95-2011</u>
	)	
<i>Debtor</i>	)	
	)	
	)	
	)	
DAVID EUGENE WEST	)	
	)	
<i>Plaintiff</i>	)	
	)	
	)	
	)	
WAYNE COUNTY, GEORGIA	)	
BOARD OF COMMISSIONERS;	)	
SUE BUNN; JERRY WRIGHT;	)	
GENE GRAHAM; JAMES THOMAS;	)	
JAMES BOYKIN;	)	
STATE COURT OF WAYNE	)	
COUNTY, GEORGIA; STETSON	)	
BENNETT, JR., CLERK;	)	
and	)	
WAYNE COUNTY STATE COURT	)	
PROBATION OFFICE, OLLIE	)	
MCGAHEE, PROBATION OFFICER	)	
	)	
<i>Defendants</i>	)	

**MEMORANDUM AND ORDER**

At a pre-trial hearing held on May 9, 1995, in Brunswick, Georgia, the

parties to this proceeding represented to the Court that there were no facts in dispute and that the proceeding could be submitted to the Court for decision on a stipulated evidentiary basis. Based upon the stipulated evidence presented at the hearing and the applicable authorities, I make the following Findings of Fact and Conclusions of Law.

### FINDINGS OF FACT

The following facts have been stipulated. On September 27, 1993, approximately one year before filing his Chapter 13 case, Debtor was convicted of driving with a suspended license and without insurance in the State Court of Wayne County. He was sentenced to twelve (12) months probation on each count consecutively, and total fines and costs of \$900.00, plus a \$10.00 per month probation fee. Subsequently, on March 8, 1994, Debtor's sentence was modified to allow him to either pay the fine in full or work 180 hours of community service.

Debtor filed his petition under Chapter 13 of the Bankruptcy Code on November 7, 1994. Debtor's fine apparently remained unpaid. Accordingly, Debtor listed the fine in his bankruptcy schedules, and the Wayne County Board of Commissioners ("Board") thereafter received timely notice of Debtor's Chapter 13 case. Debtor's proposed Chapter 13 plan, filed contemporaneously with his petition, proposed to pay the fine in full as a priority claim.<sup>1</sup> Debtor subsequently contacted his probation officer and informed him of his intention to pay the fine in full through his Chapter 13 plan. Nevertheless, Debtor

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<sup>1</sup> This Court confirmed Debtor's Chapter 13 plan, including the provision calling for full payment of the fine, on April 5, 1995.

was incarcerated for failing to pay the fine in accordance with the terms of his probation and was forced to borrow \$600.00 to obtain his release from jail.

On March 13, 1995, Debtor initiated the instant adversary proceeding against the Board of Commissioners for Wayne County, Georgia, the State Court of Wayne County, the Clerk of the State Court, Wayne County State Court Probation Office and Debtor's Probation Officer, Ollie McGahee. Debtor seeks an Order holding these named defendants in contempt of court for their violation of the automatic stay imposed under section 362(a)(6) of the Bankruptcy Code and awarding him damages, court costs and attorney's fees. Defendants, admitting all relevant facts, contend that, under section 362(b)(1), they are not, as a matter of law, subject to the automatic stay of section 362(a)(6).

#### CONCLUSIONS OF LAW

Section 362(a)(6) of the Code provides that the filing of a bankruptcy petition "operates as a stay, applicable to all entities, of . . . any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title[.]" 11 U.S.C. § 362(a)(6). Debtor alleges that Defendants' actions in incarcerating him for failing to pay his fine in accordance with the terms of his probation violated the stay imposed under this provision. Defendants, however, point to section 362(b)(1), which provides that "the commencement or continuation of a criminal action or proceeding against the debtor," is excepted from the operation of the automatic stay of section 362(a). 11 U.S.C. § 362(b)(1). The issue presented, then, is whether Debtor's incarceration for failing

to pay his fine in accordance with the terms of his probation is the continuation of a criminal action or proceeding against Debtor.

A number of courts have held that, under section 362(b)(1), the enforcement of a criminal judgment is excepted from the automatic stay.<sup>2</sup> The district court's conclusion in Troxler Hosiery is illustrative:

The Court concludes that enforcement of the sentence declared in the pre-petition criminal contempt judgment against [the debtor] or the property of its estate . . . is excepted from the automatic stay by 11 U.S.C. § 362(b)(1) . . . [The] enforcement of a sentence is plainly a continuation of a criminal proceeding and the language and structure of 11 U.S.C. § 362(b)(1) provides for such enforcement in spite of bankruptcy. The Court has considered the potentially detrimental effect which relieving the government from the automatic stay could have on the unsecured creditors. Creditors of equal standing should not be treated unequally and creditors should not be indirectly punished for the criminal wrongs of the bankrupt. Nevertheless, when the government is due payment of a criminal fine, it is not on an equal footing with most of a bankrupt's creditors because a criminal fine is not compensation for pecuniary loss. A sovereign's interest in protecting its citizens through the criminal law is fundamentally different from private financial concerns and for that reason must take precedence.

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<sup>2</sup> See e.g., U.S. v. Troxler Hosiery Co., Inc., 41 B.R. 457, 462 (D.C.N.C. 1984), *aff'd*, 796 F.2d 723 (4th Cir. 1986), *cert denied*, 480 U.S. 930, 107 S.Ct. 1566, 94 L.Ed.2d 758 (1987); 134 Baker Street, Inc., v. State of Georgia, 47 B.R. 379, 380-81 (N.D.Ga. 1984); Matter of Sims, 101 B.R. 52, 55 (Bankr. W.D.Wis. 1989); In re Gilliam, 67 B.R. 83, 87 (Bankr. M.D.Tenn. 1986); In re Anoai, 61 B.R. 918, 920-21 (Bankr. D.Conn. 1986); In re Wise, 25 B.R. 440, 441-43 (Bankr. E.D.Va. 1982). See also U.S. v. Caddell, 830 F.2d 36, 39 (5th Cir. 1987) (district court's post-petition imposition and revocation of Chapter 11 debtor's probation held proper because "the automatic stay . . . does not bar 'the commencement or continuation of a criminal action or proceeding against the debtor. . .'", *reh'g denied*, 833 F.2d 1010 (5th Cir. 21987)). *Contra* In re Landstrom Distributors, Inc., 55 B.R. 390, 391-92 (Bankr. C.D.Cal. 1985) (collection of criminal fine not intended to be excepted from automatic stay under section 362(b)).

Troxler Hosier, 41 B.R. at 462.

The language of section 362(b)(1) is broad, and "numerous cases support the proposition that where a convicted defendant is sentenced to a monetary penalty in lieu of a jail term, and then defaults, the incarceration of the defendant is the continuation of the underlying criminal proceeding within the meaning of section 362(b)(1)."<sup>3</sup> *See e.g., Gilliam*, 67 B.R. at 87 (district attorney's revocation of the debtor's probation "unaffected" by automatic stay under section 362(b)(1); Wise, 25 B.R. at 441-42 n. 1 (state's revocation of suspended sentence and issuance of *capias* for debtor's arrest not barred by stay); Caddell, 830 F.2d at 38-39 (revocation of Chapter 11 debtor's probation not barred by automatic stay).

In view of the expansive language employed in section 362(b)(1) and the authorities interpreting it, this court concludes that Debtor's incarceration for his failure to pay his fine in accordance with the terms of his probation falls within the "continuation of a criminal action" language of section 362(b)(1) and is, therefore, excepted from the automatic stay of Debtor's Chapter 13 case. Accordingly, the relief sought in Debtor's Complaint will be denied and judgment shall be entered in Defendants' favor.

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<sup>3</sup> Sims, 101 B.R. at 55.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS  
THE ORDER OF THIS COURT that the complaint be dismissed with prejudice and that a  
judgment of no liability be entered in favor of Defendants.

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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This \_\_\_\_ day of June, 1995.